

REMARKS/ARGUMENTS

Claims 11, 13-20 and 22-30 are pending in the above application. By the above amendment, claims 12 and 21 have been cancelled without prejudice.

The Office Action dated March 16, 2010, has been received and carefully reviewed. In that Office Action, claims 11-30 were rejected under 35 U.S.C. 103(a) as being unpatentable over Hupfer. It is believed that all claims patentably distinguish over the art of record, and reconsideration and allowance of claims 11, 13-20 and 22-30 is respectfully requested in view of the above amendments and the following remarks.

Claims 11 and 12 were rejected under 35 U.S.C. 103(a) as being unpatentable over Hupfer. By the above amendment, the limitations of claim 12 have been added to claim 11, and claim 12 has been cancelled. Claim 11 as amended recites a system for performing vehicle crash tests that includes, inter alia, a guide device for defining a predetermined path of a vehicle, a speed guide device for defining a predetermined speed that the vehicle will achieve at at least one location along the predetermined path and a driverless, multi-track vehicle. The vehicle includes at least one drive apparatus for driving at least one wheel of the vehicle, at least one braking apparatus for selectively braking at least two wheels disposed on different sides of the vehicle, a guiding device for calculating a deviation between the predetermined path and an actual path of the vehicle and a control device for controlling the operation of the vehicle such that the vehicle is movable along the predetermined path with a speed that is predetermined for a crash location. The claim also recites that the operation of the drive apparatus and/or the braking device is/are controllable by the control device such that, when there is a deviation between the actual path and the predetermined path, the

direction of the vehicle is changeable by selectively changing the torques acting on the wheels such that the deviation decreases. The claim also recites that the drive apparatus and the braking apparatus are arranged and constructed to cooperate together such that the vehicle speed does not change as a result of a braking intervention for the purpose of converging the actual path with the predetermined path.

The Office Action acknowledges that Hupfer does not show selectively changing the torques acting on the wheels such that deviation decreases; however, the Office Action indicates that it would have been obvious “to utilize the vehicle control functions such as engine, transmission, steering and the brakes of Hupfer in order to selectively change the torques on the wheels in order to decrease deviation between predetermined path and the actual path since the functions are well known.” It is respectfully submitted that using an engine to change the speed of a vehicle is known and using the steering system of a vehicle to steer a vehicle is known and using the brakes to slow a vehicle is known. However, nothing in the record suggests that selectively changing torques on wheels to decrease a deviation as claimed is “well known” as stated in the Office Action. Section 2144.03 of the MPEP provides that rejections can only be based on assertions of what is “well-known” in the art under limited circumstances. As provided by that MPEP section, “[o]fficial notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known.” This section also provides that it “is never appropriate to rely solely on ‘common knowledge’ in the art without evidentiary support in the record, as the principal evidence upon which a rejection was

based.” In the present case, an assertion of what is well-known appears to be, impermissibly, the primary basis for rejecting claim 11. It is respectfully submitted that decreasing the deviation of a vehicle path as claimed is not the type of assertion that can be instantly and unquestionably demonstrated as being true. The examiner’s assertion regarding what is “well-known” in the art is respectfully traversed, and it is respectfully requested that the examiner provide evidentiary support for this assertion, as required by MPEP 2144.03, if the rejection of claim 11 is not withdrawn.

The Office Action also asserts as another basis for finding obviousness that it “would have been well within the scope of Hupfer to alter wheel torque.” The meaning of this statement is unclear. Obviousness cannot be established by asserting that a modification is possible unless a reason for making the modification is also provided. MPEP 2143.01. Therefore, unless it can be explained why one of ordinary skill in the art would have removed Hupfer’s steering actuator and attempted to modify Hupfer’s brakes to allow them to be used for selectively altering torque, obviousness has not been established.

Furthermore, the limitation of claim 12, which has been added to claim 11, is not addressed in the Office Action. Claim 11 as amended recites that the drive apparatus and the braking apparatus are arranged and constructed to cooperate together such that the vehicle speed does not change as a result of a braking intervention for the purpose of converging the actual path with the predetermined path. Hupfer teaches that the brakes can be controlled, but nothing in Hupfer suggests that vehicle speed should not change as a result of a braking intervention. This limitation of claim 11 is also not shown or suggested by Hupfer, and claim 11 as amended is submitted to further

distinguish over Hupfer for this reason.

If the rejection of claim 11 is maintained, it is respectfully requested that the examiner explain where Hupfer shows the limitation of former claim 12 or identify the reason that one of ordinary skill in the art would have modified Hupfer in the manner required to meet the limitations of former claim 12. Claim 11 as amended is submitted to further distinguish over Hupfer for this reason.

Claims 13-20 depend from claim 11 and are submitted to be allowable for at least the same reasons as claim 11.

Claim 21 has been amended to include the limitations of claim 22, and claim 22 has been cancelled. Claim 21 as amended includes the recitation "controlling the operation of the drive apparatus and/or the braking device such that, when there is a deviation between the actual path and the predetermined path, the direction of the vehicle is changed by selectively changing the torques acting on the wheels, whereby the deviation decreases, and wherein the drive apparatus and the braking apparatus are arranged and constructed to cooperate together such that the vehicle speed does not change as a result of a braking intervention for the purpose of converging the actual path with the predetermined path. These limitations are similar to the limitations of amended claim 11, and claim 21 is submitted to be allowable for at least the same reasons as claim 11.

Claims 23-30 depend from claim 21 and are submitted to be allowable for at least the same reasons as claim 21.

CONCLUSION

Each issue raised in the Office Action dated March 16, 2010, has been addressed, and it is believed that claims 11, 13-21 and 23-30 are in condition for allowance. Wherefore, reconsideration and allowance of these claims is earnestly solicited. If the examiner believes that any additional changes would place the application in better condition for allowance, the examiner is invited to contact the undersigned at the telephone number listed below.

Deposit Account Authorization

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this, concurrent and future replies, including extension of time fees, to Deposit Account 50-3828 and please credit any excess fees to such deposit account.

Respectfully submitted,

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